IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

OP.No. 12825 of 2001(B)

PETITIONER:

G.PUSHPARAJAN, (RETD), ASSISTANT ENGINEER, KERALA WATER AUTHORITY), NALANDA, PONGANADU P.O., KILIMANOOR.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.P.VISWAMBARAN
SRI.R.O.MUHAMED SHEMEEM

RESPONDENTS:

1. **STATE OF KERALA, REP.BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE MANAGING DIRECTOR, KERALA WATER AUTHORITY, JALA BHAVAN, VELLAYAMBALAM, THIRUVANANTHAPURAM.**

3. **THE EXECUTIVE ENGINEER, WATER SUPPLY DIVISION, KERALA WATER AUTHORITY, ATTINGAL.**

4. **THE ASSISTANT EXECUTIVE ENGINEER, WATER SUPPLY SUB DIVISION, KERALA WATER AUTHORITY, ATTINGAL.**

5. **THE ACCOUNTS OFFICER (ESTT) KERALA WATER AUTHORITY, JALA BHAVAN, VELLAYAMBALAM, THIRUVANANTHAPURAM.**

BY ADV. SMT.CHINCY GOPAKUMAR, SC, KWA
SRI.THOMAS MATHEW NELLIMOOTTIL,SC,KWA
SRI.C.UNNIKRISHNAN, SC, KWA
BY GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.12825/2001

ORDER ON CMP. NO.20325/2001 IN OP. 12825/2001

DISMISSED

05.09.2007 **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT EXTRACT OF G.O.(P) NO.66/95/LAD DT. 24.4.95.

EXT.P2:- COPY OF THE LETTER NO.KWA/A0/ESTT/PEN. 2619/660 DT. 31.3.99 ISSUED BY THE 5TH RESPONDENT.

EXT.P3:- COPY OF THE PROCEEDINGS NO.E1-1/98 DT. 30.4.99 ISSUED BY THE 4TH RESPONDENT.

EXT.P4:- COPY OF THE REPRESENTATION ON 17.1.2001 TO THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE LETTER NO.KWA/AO ESTT/PEN. 2619/1385 DT. 21.3.01 ISSUED BY THE 5TH RESPONDENT.

EXT.P6:- COPY OF THE G.O.(P) NO./1041/79/(142)/FIN. DT. 27.11.79.

/TRUE COPY/

P.A. TO JUDGE

tss

Thottathil B. Radhakrishnan, J.

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O.P.No.12825 of 2001

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Dated this the 5th day of September, 2007.

JUDGMENT

Petitioner joined the service of the Kerala Water Authority as a Works Superintendent. He was later promoted as Draftsman Gr-I. It appears that he stagnated in that category and was accordingly given a higher grade which resulted in the post he occupied being called as Draftsman Gr-I (Higher Grade). By the granting of such a higher grade, he came to enjoy the scale that is available to an Assistant Engineer. Thereafter, he was promoted as Assistant Engineer on 8-2-1995. While making that promotion, it was noticed that the petitioner was already enjoying a scale of pay which was equivalent to that of the post to which he was promoted. Thereafter, relying on paragraph 32 of the G.P.(P)No.66/95/LAD dated 24-4-1995, the petitioner was given an increment though fixation of pay under Rule 28A of Part I of the Kerala Service Rules is not admissible. At a later point of time, the auditing wing of the Water Authority appears to have taken the stand that the grant of such an increment was

impermissible because, by the grant of higher grade as Draftsman Gr-I, the petitioner had already been brought to the scale of pay of Assistant Engineer and it is not a case where the post to which he is promoted and the feeder category is having the same scale of pay. But it has to be noticed that, as a matter of fact, he was enjoying the scale of pay of an Assistant Engineer as a Higher Grade Draftsman Gr-I, which situation was the result of his continued stagnation in the category of Draftsman Gr-I. If the intention of Ext.P1 Government Order is to be understood as extending to a person who gets promoted to a higher category, the benefit of an increment from the scale of pay which he had drawn before the promotion, then, the confirmation of one increment cannot be treated as groundless. Therefore, it is a situation where two views are possible on the question whether the petitioner was entitled to an increment relying on Ext.P1 G.O. on his promotion as Assistant Engineer. So much so, the grant of the increment while the petitioner was promoted as Assistant Engineer cannot be treated as totally unauthorised. Therefore, even if it is possible for the Kerala Water Authority and the Government to contend that in a particular view of the

matter it is impermissible to grant such increment, I do not deem it appropriate or justifiable to enforce recovery of amounts already enjoyed on the basis of such increment. It is not something that could be finally counted for, while issuing the non-liability certificate of the petitioner.

In the result, the impugned proceedings are quashed and it is directed that there shall be no recovery on the basis of Exts.P2, P3 and P5 and any recovery made shall be restored to the petitioner and such restoration of the increment granted to him while the petitioner was promoted as Assistant Engineer will be reckoned for the purpose of determining his retiral benefits.

Writ petition is allowed. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.12825 of 2001
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JUDGMENT

Dated:5-9-2007